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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 397

DUKE POWER COMPANY AND SOUTHERN PUBLIC UTILITIES COMPANY,

Petitioners.

vs.

GREENWOOD COUNTY AND E. L. BROOKS, S. A. AGNEW AND E. I. DAVIS, MEMBERS OF AND CONSTITUTING THE FINANCE BOARD OF GREENWOOD COUNTY, AND HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE FOURTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE FOURTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Duke Power Company and Southern Public Utilities Company, respectfully show:

A.

SUMMARY STATEMENT OF MATTERS INVOLVED

This is an application by petitioners, Duke Power Company and Southern Public Utilities Company, for a writ of certiorari to the United States Circuit Court of Appeals, for the Fourth Circuit, for the review of a decree of that court entered on August 6, 1937 (R. 878-9), whereby the

Court of Appeals affirmed a final decree of the United States District Court, for the Western District of South Carolina, entered on June 2, 1937, denying petitioners, plaintiffs in the District Court, the injunctive relief sought by their bill of complaint and dismissing the bill on its merits.

The cause was before this court at the October Term, 1936 on a previous writ of certiorari to the court below. 298 U. S. 651. Because of the fact that the record then before the court had been improperly made up, the court did not consider the merits; but, in order that the cause might be properly heard and determined, reversed the decree of the Circuit Court of Appeals and remanded the cause to the District Court with directions that the decrees theretofore entered by that court be vacated and for further proceedings. 299 U. S. 259. (R. 539-41). Such proceedings have been had, resulting in the District Court's decree of June 2, 1937.

The decision of the Circuit Court of Appeals, affirming the decree of the District Court, as in the case of its previous decision, was by a divided court, Judges Parker and Northcott constituting the majority, with Judge Parker writing the majority opinion, and Judge Soper writing a dissenting opinion. The questions presented are substantially the same as those presented on the previous writ.

OPINIONS OF THE COURTS BELOW

The opinions rendered in the courts below subsequent to the remand of the case by this court have not yet been reported. Judge Parker's opinion written for the majority of the Circuit Court of Appeals appears in the record at pages 849-873; Judge Soper's dissenting opinion at pages 873-878; and Judge Glenn's opinion rendered in the District Court at pages 744-778.

JURISDICTION

The jurisdiction of this court is invoked under Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925; U. S. Code, Title 28, Sec. 347. The decree of the Circuit Court of Appeals, which petitioners seek to have reviewed, was entered August 6, 1937. (R. 878-9).

THE STATUTE INVOLVED

The statute involved is Title II of the National Industrial Recovery Act, Secs. 201, 202, 203, 206, 210(a), and 220, Act of June 16, 1933; 48 Stat. 200, 201, 202, 204, 206 and 210; U. S. C., Title 40, Secs. 401, 402, 403, 406, 410 and 411. The declaration of policy in Title I and the pertinent sections of Title II are printed in Appendix. (pp. 14-20 infra).

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals erred in holding that Title II of the National Industrial Recovery Act (48 Stat. 200, et seq.), as applied to this case and as construed to authorize the action of the Public Works Administrator in making a loan and grant of federal funds to Greenwood County, South Carolina, for the construction of a local municipal electric utility, is constitutional, and in failing to hold that said statute as so applied and construed, is unconstitutional, in that:

(a) It is not within any power delegated to Congress by the general welfare clause, U. S. Constitution, Art. I, Sec. 8, Cl. 1, or by any other clause or provision of the U. S. Constitution; and is violative of the Tenth Amendment to said Constitution, in that it invades powers and governs and controls matters reserved to the States.

(b) It unlawfully delegates legislative power to the executive department of the government, in violation of Art. I, Sec. 1, of the U. S. Constitution, and of the other provisions of said Constitution which prohibit the delegation of legislative power to the executive department.

(c) It deprives petitioners of their property without due process of law, in violation of the Fifth Amendment to the U. S. Constitution.

2. Whether the Circuit Court of Appeals erred in holding that, in the circumstances disclosed by the record, Title II of the National Industrial Recovery Act authorizes the action of the Public Works Administrator in making a loan and grant of federal funds to Greenwood County, South Carolina, for the construction of a local municipal electric utility as a federal public works project.

3. Whether the Circuit Court of Appeals erred in holding that, even if Title II of the National Industrial Recovery Act (48 Stat. 200, et seq.), as applied to this case, be unconstitutional, or the proposed action of the Federal Administrator be unauthorized by said Act, yet petitioners are not entitled to question the legality of said action even though their property and business will be irreparably damaged, if not destroyed, and their rates regulated and reduced by the proposed use of federal funds for the construction of said local electric utility.

MATERIAL FACTS

Petitioners are electric utility corporations selling electric power in South Carolina, at rates approved by the Public Service Commission of that State. They are the only large power companies doing business in Greenwood County, South Carolina, and surrounding counties.

On November 16, 1933, respondent, Greenwood County, made application to the Federal Emergency Administration

of Public Works for a loan and grant of federal funds under Title II of the National Industrial Recovery Act amounting to $2,627,197.00 for the construction of an electric power plant at a point known as Buzzard Roost on the Saluda River in said County. The application was approved in June, 1934, and the amount later increased to $2,852,000. (R. 267-8, 464-5).

The entire cost of the plant would be defrayed by the Federal Government. 30% of the cost would be an outright gift or subsidy, no part of which would ever have to be repaid. The balance of the cost would be represented by a so-called loan, secured by special revenue bonds, both the principal and interest of which would be repayable, if at all, only out of the prospective revenues of the plant. The County itself would make no investment in the plant and would assume no liability or obligation of any character for its construction or operation. But for the federal subsidy and the proposed method of federal financing the construction of the plant would not be possible and its construction, otherwise than as a federal public works project, has never been contemplated. (R. 122-3, 199-200, 785).

The proposed plant would be a purely local enterprise operating in Greenwood County and in the two adjoining Counties of Newberry and Laurens. It would engage in the general utility business of furnishing electric power to municipalities, industrial enterprises, private individuals, and the public generally, for domestic, industrial and commercial uses. (R. 175).

Due to the federal subsidy the rates of the proposed plant have been fixed substantially below the rates of petitioners. Contracts, conditioned upon their approval by the Public Works Administration, have been made with existing customers of petitioners for the sale of practically the entire output of the plant at these lower rates. (R. 691, 371-98).

Should the proposed plant be constructed and put into operation, the effect of the lower rates would be to force petitioners to make reductions in their rates. In the three Counties of Greenwood, Newberry and Laurens alone, petitioners would sustain a net loss of approximately $250,000 a year. (R. 561-2, 566).

THE PROCEEDINGS IN THE CAUSE

The proceedings prior to the remand by this court are fully stated in the opinion of the court. 299 U. S. 259. Briefly stated, they were as follows:

The suit was instituted in the District Court on November 7, 1934. Greenwood County and the members of its Finance Board were named as the original defendants. Harold L. Ickes as Federal Emergency Administrator of Public Works intervened and was permitted to become a party defendant on December 4, 1934. (R. 65).

After intervening, the Administrator filed an answer showing an agreement dated December 8, 1934 (after the commencement of the suit), between the government and Greenwood County, which set forth the terms and conditions of the loan and grant for the construction of the proposed plant. (R. 66-94). Petitioners, plaintiffs in the District Court, by amended and supplemental bill, challenged the constitutional authority of the Federal Government, as well as the statutory authority of the Administrator, to make the loan and grant. Respondents, defendants in the District Court, filed a motion to dismiss the bill for want of equity, which motion the court denied. 10 F. S. 854. (R. 117-153). Respondents answered, evidence was taken and a final decree was entered on August 26, 1935, enjoining respondents from carrying out the contract of December 8, 1934, and further enjoining the defendant Ickes from advancing to the County, and the County from receiving, any federal funds in furtherance of the project. 12 F. Supp.

70. (R. 477-85). Respondents appealed to the Circuit Court of Appeals.

Mr. Ickes, appellant in the Court of Appeals, informed that court that since the taking of the appeal the contract of December 8, 1934 had been terminated and a new agreement, dated November 30, 1935, substituted, eliminating the terms and conditions of the earlier agreement, which he stated had been held by the District Court to be in excess of the authority of the County under the laws of South Carolina.* (R. 492-3). He asked that the cause be remanded to the District Court with leave to the parties to amend their pleadings in accordance with the facts "and for a trial or other disposition of the cause on such amended pleadings." (R. 492-514). In response to this request, the Court of Appeals remanded the cause to the District Court "to the end that that court might reconsider its decision in the light of" the new contract, and might "take such further action as may be appropriate in the premises." (R. 515-18).

In remanding the cause the Court of Appeals did not vacate the final decree of injunction entered in the District Court on August 26, 1935. In the meantime the term of that court at which the decree had been entered had expired.

Upon the further hearing in the District Court pursuant to the mandate of the Court of Appeals, the respondents introduced in evidence the new contract and offered testimony by Mr. Ickes and other witnesses. The District Court

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*In fact Judge Watkins did not hold the terms and conditions of the agreement of December 8, 1934, to be in excess of the authority of the County under the laws of South Carolina. He expressly held that all questions of state law had been conclusively settled in favor of Greenwood County by the decision of the Supreme Court of South Carolina in the case of Park v. Greenwood County, 174 S. C. 35 (R. 126). Judge Watkins' decision on which the decree of injunction was based was placed solely on federal grounds. (R. 117-152).

admitted in evidence the new contract, but, for the reasons stated in a supplemental opinion (R. 518-527), excluded the other evidence offered by respondents. It entered a second decree on December 21, 1935 refusing to set aside and vacate the original decree of injunction of August 26, 1935. (R. 527-8). From this second decree respondents again appealed to the Circuit Court of Appeals. The Court of Appeals reversed the decree of the District Court and ordered the bill to be dismissed, 81 F. (2d) 986, Judge Soper dissenting.

On application of petitioners this court granted a writ of certiorari on May 18, 1936, 298 U. S. 651, and the cause was argued at the October Term, 1936.

This court, for the reasons stated in its opinion rendered December 14, 1936, declined to pass on the merits of the case. 299 U. S. 259. It held that the cause had been heard in the Circuit Court of Appeals on a record improperly made up. Accordingly, and in order that the cause might be properly heard and determined, it reversed the decree of the Circuit Court of Appeals and remanded "the cause with directions that the decrees entered by the District Court be vacated, that the parties be permitted to amend their pleadings in the light of existing facts, and that the cause be retried upon the issues thus presented." 299 U. S. 259.

Upon receipt of the mandate of this court, the District Court entered an order setting aside the decrees which it had theretofore rendered, and permitted the parties to file further pleadings, (R. 541-2). The respondents filed supplemental answers showing the new agreement of November 30, 1935, and alleging that this new agreement had entirely superseded the previous agreement of December 8, 1934. (R. 543-6). Petitioners filed a reply to the supplemental answers admitting the execution of the new agreement, but denying that it worked any material change in

the case or in the issues presented. They alleged that the changes made by the substitution of the new agreement for the prior agreement were matters of verbiage only, leaving the loan and grant and the proposed project the same in character, purpose and effect and subject to the same infirmities and objections. (R. 546-8).

The District Court held that the mandate of this court required that the cause be heard de novo, and accordingly did not limit the retrial to matters which had occurred subsequent to the original decree of injunction of August 26, 1935, but heard the entire cause anew. (R. 555-7).

The evidence taken in the cause on the original hearing was treated as a part of the record for the purposes of the retrial. The testimony of Secretary Ickes and other witnesses taken in the District Court following the first remand of the case by the Circuit Court of Appeals was, by stipulation of the parties, introduced as if taken by deposition. Much additional evidence was introduced, relating principally to three questions:

1. The alleged power plan of the Public Works Administration and its alleged policy to use its power to make loans and grants of federal funds for the construction of local electric power plants in such a fashion as to regulate local electric rates and to establish publicly owned local electric power plants whose rates would serve as yardsticks for the reduction of electric rates.*

* On the original hearing petitioners presented evidence showing that the loan and grant for the construction of the proposed plant had been approved because petitioners' rates were "considered excessive, and did "not meet with the approval of the PWA authorities" (R. 300); and that the plant had been selected for construction as a public works project pursuant to the power plan of the Public Works Administration to make loans and grants for competitive municipal plants in such a way as to bring about the reduction of electric power rates; (R. 300, 361-3) and the District Court found as a fact that the loan and grant for the proposed plan had been authorized by the Public Works Administration as a part of this power plan. (R. 122, 480). Additional evidence in support of this conclusion was introduced on the retrial. (R. 576, 578, 593-4, 595-602, 605, 606, 608-9, 611-16, 619-27, 654-664, 702).

2. The new loan and grant agreement of November 30, 1935, entered into between the Government and Greenwood County, in substitution of the previous agreement of December 8, 1934, and whether this new agreement cured the alleged illegality of the original allotment or resolution of the Public Works Administration, whereby the project was included in the socalled comprehensive program of public works and funds allotted for its construction, for the carrying out of which original allotment or resolution the new agreement, like the previous agreement, was entered into. (R. 368, 464-5).

3. The injury which petitioners would sustain as a result of the proposed use of federal funds for the construction of the plant and the effect thereof on their local rates for power. (R. 558-63, 566, 567-70, 670, 688, 691, 696-7).

The District Court upheld the validity of the loan and grant and dismissed the bill on the merits. (R. 799-800). It filed an extended opinion on all the questions involved (R. 744-778) and separately filed findings of fact and conclusions of law. (R. 779-799). Petitioners promptly appealed to the Circuit Court of Appeals and the cause was promptly heard and determined by that court. (R. 848).

In affirming the judgment of the District Court, the Circuit Court of Appeals held that the District Court had correctly construed the mandate of this court as requiring the entire cause to be heard de novo, and not as intended to limit the retrial to matters which had occurred subsequent to the original decree of injunction of August 26, 1935. (R. 850-1). On this point Judge Soper did not dissent. On the questions involving the constitutionality of the statute, the authority of the Administrator under the statute to make the loan and grant, and the right of petitioners to sue, the majority of the Court of Appeals followed the majority opinion on the former appeal. 81 F. (2d) 986. (R. 848-873). On these questions Judge Soper

again dissented, holding that the additional evidence taken upon the retrial strongly supported the conclusions on which his former dissent was based. (R. 873-8).

Upon the cause being remanded and the original decree of injunction being vacated, the District Court restrained respondents, during the pendency of the suit, from making any use of federal funds (with an immaterial exception) in furtherance of the project. (R. 550-2). Upon the cause being docketed in the Circuit Court of Appeals, that court entered a similar restraining order, stating that it was entered on account of the importance of the case and of the issues involved; (R. 843-6) and after its decision it stayed its mandate pending the filing of this application for writ of certiorari and the disposition thereof by this court.

SPECIFICATION OF ERRORS INTENDED TO BE URGED

The errors assigned and intended to be urged by petitioners, should their petition be allowed, are set forth in their assignments of error. (R. 801-819, 831-2). The errors assigned raise the questions set forth in the foregoing statement of the questions presented.

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The questions involved in this cause are important questions of federal law which have not been, but should be, settled by this court. They not only affect the interests of the parties to this cause but are of the highest public importance. In addition to this suit and the large interests it affects, both from the standpoint of petitioners and from the standpoint of respondents, there are approximately fifty other suits involving the same questions pending in the lower federal courts. (75th Congress, First Session, Senate Document No. 27).

2. The questions are substantially the same as the questions presented by the previous writ of certiorari granted by this court in this cause. They were not then decided, for the reasons heretofore stated, and still remain undecided by this court. The importance of the questions presented and the propriety of a determination of them by this court would therefore seem to be clear.

3. The importance of the questions involved is further shown by the fact that on June 1, 1937, this court granted writs of certiorari to the United States Court of Appeals for the District of Columbia in the cases of Alabama Power Company v. Ickes, (two cases), and Iowa City Light & Power Company v. Ickes, (Nos. 84, 85 and 86, October term, 1937). The questions involved in those cases, or at least some of them, are similar in character to the questions involved in this case. The record in this case contains substantial evidence not contained in the records in those cases and presents substantially different aspects of the important questions involved. Furthermore in those cases the Court of Appeals for the District of Columbia did not pass upon the question of the constitutionality of the statute or of the statutory authority of the Administrator but passed only on the question of the plaintiffs' right to sue.

4. The conflicts of judicial opinion in this cause between District Judge Watkins, on the original hearing, and District Judge Glenn, on the retrial, and between Circuit Judges Parker and Northcott and Circuit Judge Soper in the Court of Appeals furnish an additional reason why the questions involved should be settled by this Court.

5. In view of the seemingly undeniable desirability that the questions involved should be determined by this Court any discussion of the merits of the cause or of what is believed to be a misapplication by the Circuit Court of Appeals of previous decisions of this Court would appear to be neither necessary nor proper in this petition.

WHEREFORE, these petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all of the proceedings in the case numbered and entitled on its docket No. 4209, Duke Power Company and Southern Public Utilities Company, Appellants, v. Greenwood County and E. L. Brooks, S. A. Agnew, and E. I. Davis, Members of and Constituting the Finance Board of Greenwood County, and Harold L. Ickes, as Federal Administrator of Public Works, Appellees, and that the said decree of said Circuit Court of Appeals for the Fourth Circuit may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

DUKE POWER COMPANY, a corporation,

By N. A. COCKE,
Vice-President.

SOUTHERN PUBLIC UTILITIES COMPANY, a corporation,

By E. C. MARSHALL,
President.

NEWTON D. BAKER,
R. T. JACKSON,
W. R. PERKINS,
H. J. HAYNSWORTH,
J. H. MARION,
W. B. MCGUIRE, JR.,
W. S. O'B. ROBINSON, JR.,
Attorneys for Petitioners.

September 8, 1937.

APPENDIX

PERTINENT SECTIONS OF THE NATIONAL INDUSTRIAL RECOVERY ACT.

AN ACT

To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes. (48 Stat. 195).

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled:

TITLE I—INDUSTRIAL RECOVERY

DECLARATION OF POLICY.

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of coöperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources. (48 Stat. 195; 15 U. S. C. 701).

* * * *

TITLE II—PUBLIC WORKS AND CONSTRUCTION PROJECTS

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS.

SECTION 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of such experts and such other officers and employees as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

(d) After the expiration of two years after the date of the enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare

that the emergency recognized by section I has ended, the President shall not make any further loans or grants or enter upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate: Provided, that he may issue funds to a borrower under this title prior to January 23, 1939, under the terms of any agreement, or any commitment to bid upon or purchase bonds, entered into with such borrower prior to the date of termination, under this section, of the power of the President to make loans. (48 Stat. 200, 40 U. S. C. 401).

SECTION 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly-owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control and also the construction of any river or drainage improvement required to perform or satisfy any obligation incurred by the United States through a treaty with a foreign Government heretofore ratified and to restore or develop for the use of any State or its citizens water taken from or denied to them by performance on the part of the United States of treaty obligations heretofore assumed: Proyided, That no river or harbor improvement shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction,

reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London Naval Treaty of 1930 and of aircraft required therefor and construction of heavier-than-air aircraft and technical construction for the Army Air Corps and such Army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such Army tactical units as he may designate: Provided, however, That in the event of an international agreement for the further limitation of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend, in whole or in part any such naval or military construction or mechanization and motorization of Army units: Provided, further, That this title shall not be applicable to public works under the jurisdiction or control of the Architect of the Capitol or of any commission or committee for which such Architect is the contracting and/or executive officer. (48 Stat. 201; 40 U. S. C. 402).

SECTION 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202;

(2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase: Provided, That all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to section 209 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; and (5) to advance, upon request of the Commission having jurisdiction of the project, the unappropriated balance of the sum authorized for carrying out the provisions of the Act entitled "An Act to provide for the construction and equipment of an annex to the Library of Congress," approved June 13, 1930 (46 Stat. 583); such advance to be expended under the direction of such Commission and in accordance with such Act: Provided, that in deciding to extend any aid or grant hereunder to any State, county, or municipality, the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend to public works in the several States, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands.

(b) All expenditures for authorized travel by officers and employees, including subsistence, required on account of any

Federal public-works projects, shall be charged to the amounts allocated to such projects, notwithstanding any other provisions of law; and there is authorized to be employed such personal services in the District of Columbia and elsewhere as may be required to be engaged upon such work and to be in addition to employees otherwise provided for, the compensation of such additional personal services to be a charge against the funds made available for such construction work.

(c) In the acquisition of any land or site for the purposes of Federal public buildings and in the construction of such buildings provided for in this title, the provisions contained in sections 305 and 306 of the Emergency Relief and Construction Act of 1932, as amended, shall apply.

(d) The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness. (48 Stat. 202; 40 U. S. C. 403.)

* * * * *

SECTION 206. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, or supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the fol-

lowing order: (A) to citizens of the United States and aliens who have declared their intentions of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed: Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage. (48 Stat. 204, 40 U. S. C. 406).

* * * *

ISSUE OF SECURITIES AND SINKING FUND

SECTION 210. (a) The Secretary of the Treasury is authorized to borrow, from time to time, under the Second Liberty Bond Act, as amended, such amounts as may be necessary to meet the expenditures authorized by this Act, or to refund any obligations previously issued under this section, and to issue therefor bonds, notes, certificates of indebtedness, or Treasury bills of the United States. (48 Stat. 206; 40 U. S. C. 410(a)).

* * * *

APPROPRIATION

SECTION 220. For the purposes of this Act, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $3,300,000,000. (48 Stat. 210; 40 U. S. C. 411).